



IP ITeasers 051:

Battle of the Bling

When it comes to luxury living, lines are becoming increasingly blurred. This is the bold new world of brand-bragging and Insta-influencing around the clock. Dior dessert plates, Ferrari cologne, even a Versace vase; they're all just a click away. So, will consumers really notice (or care) whether they're wearing a logo on their wrist or on their chest?

Rolex recently applied for the annulment of a EUIPO decision which, to summarise, resulted in the registration of a trade mark featuring a five-pronged crown unquestionably similar to its own. The applicant, a Scandinavian fashion group, wanted to deploy the emblem on its "Junk de Lux" brand.

The General Court dismissed the action: *Rolex v EUIPO*, Case T-726/21 (18 January 2023).

Rolex had failed to (1) demonstrate how the fashion brand was taking unfair advantage of the reputation of its earlier mark, or (2) identify any serious risk of future injury. The requisite conditions had therefore not been satisfied.

However, the more interesting debate concerned whether "clothing, footgear, headgear" (the goods applied for) were in any way similar to "watches" and "jewellery" (amongst the goods and services for which the Rolex mark enjoys protection). The EUIPO held on appeal that they were not and, as a result, there was no likelihood of confusion.

The General Court agreed, unwilling to depart from a line of authority stating the same. The nature and intended purposes of these goods are, they say, different. The Court was

unwilling to find that the goods were in competition simply because they belonged to similar market segments, or that they shared a usual commercial origin on account of recent retail trends. The Court emphasised that, just because clothing might qualify as a luxury good, this doesn't mean that the designation will be apt in every case: [33]. There was nothing here to suggest that the sweatshirts on offer were "de Lux" enough to warrant the attention of a Yuppie with a Yacht-Master.

It would be foolish to assume that the matter has been settled once and for all. Trade mark cases such as these are fact-specific. We are likely, before long, to see other parties coming to court to fight for the right to attract attention.